IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4115 OF 2004

Esteem Mercantile Pvt. Ltd.
and others ... Petitioners

versus

The Bank of Rajasthan Ltd.
and others ... Respondents

S.K.Jain, adv. for petitioners.

D.J.Khambatta with Manish Desai & Mrs. S. Menon i/by Paras Kohad & Associates, adv. for respondent no.1.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.

DATE : 26th October 2004

PC :

1. By this petition under Articles 226 and 227 of Constitution of India petitioners challenge order dated 27th January 2004 to the extent it dismisses the Cross Objections filed by them. This order is passed by Debts Appellate Recovery Tribunal (hereinafter referred to as "DRAT") in Appeal No.51 of 2002.

2. This was filed by respondent no.1 who are Applicants in Original Application No.607 of 2001 to challenge an order dated 2nd July 2002 passed

by learned Presiding Officer of Debts Recovery Tribunal-II, Mumbai (hereinafter referred to as "DRT-II"). Present petitioners were arrayed as respondents therein. During the course of hearing of the said appeal, present petitioners (original respondents) 1, 3 and 6 purported to file their cross objections. The learned Chairperson while dismissing respondent no.1 bank’s appeal, has not entertained the cross objections of petitioners. While doing so, learned Chairperson has granted liberty to the petitioners to file separate appeals to impugn that part of order of the Presiding Officer whereby defences raised by them have been rejected. Aggrieved by this order, petitioners are before us invoking our jurisdiction under Articles 226 and 227 of Constitution of India.

3. Mr.Jain, appearing for petitioners submits that learned Chairperson has committed a serious error in holding that cross objections cannot be filed in proceedings under The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "the RDB Act"). He submits that after holding that DRT and DRAT are not bound by provisions of Code of Civil Procedure, 1908, learned Chairperson could not have rejected the cross objections. That apart,

he submits that the view of learned Chairperson that cross objections cannot be entertained without payment of requisite court fee is hyper-technical. He submits that the orders suffer from error apparent on the face of record. It ignores provisions of law as also principles of equity, fairness and justice. Therefore, the impugned order deserves to be quashed and set aside. In support of his submissions Mr.Jain places reliance upon a decision of the Supreme Court reported in (1992)4-SCC-736 (A.A.Haja Muniuddin Vs. Indian Railways).

4. On the other hand, Mr.Khambatta, learned counsel appearing for respondent no.1 submits that the view taken by learned Chairperson, in the facts and circumstances of present case, is just, fair, legal and proper. He submits that the contentions of Mr.Jain proceed upon misconception of law and provisions permitting filing of cross objections. He submits that cross objections can be entertained by DRAT. Cross objections being in the nature of cross appeal in this case, the insistence on payment of requisite court fee and pre-deposit of amount found to be due and payable, cannot be faulted. He submits that considering Section 22 of the RDB Act and wide powers conferred on the Appellate

Tribunal, the Chairperson was right in rejecting petitioners' request. Mr.Khambatta places reliance upon a decision of the Supreme Court reported in (2004)3-SCC.250 (Municipal Corporation of Delhi and others Vs. International Security and Intelligence Agency Ltd.) in support of his submissions.

5. With the assistance of learned counsel appearing for parties we have perused the petition and annexures thereto. It is clear that the learned Presiding Officer, DRT-II, Mumbai by his order dated 2nd July 2002 allowed Original Application preferred by respondent no.1 in following terms :-

> "A) The application is allowed against Defendant No.1,3 to 6 with cost.
>
> B) Defendant No.1 and 3 to 6 do jointly and severally pay to the applicant an amount of Rs.4,08,78,198.59 (Rs.Four Crores Eight Lacs Seventy Eight Thousand One Hundred Ninety Eight & paise Fifty Nine only) with interest @ 17.5% p.a. from the date of filing original application in DRT, Jaipur till full realisation.
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> C) It is declared that the outstandings are secured by shares pledged (remaining after sale) by the respective Defendants. The applicant is at liberty to sell the balance shares as per law.
>
> D) It is also declared that the outstandings are secured by hypothecated

goods and book debts as described in the agreement of 01.03.1996, Exh.34.

E) Issue recovery certificate as per above terms and serve copies of judgement on the parties."

6. Aggrieved by part of the order insofar as rejection of claim of interest respondent no.1 preferred an appeal being Appeal No.51 of 2002 before DRAT, Mumbai. Their grievance was that Presiding Officer did not grant any penal interest in their favour. It was also contended that learned Presiding Officer was in error in not awarding compound interest but granting only simple interest @ 17.5% p.a.. Thus, it was an appeal by a bank on a very limited issue.

7. To this appeal, present petitioners filed reply and in the reply/written submissions they purported to raise their objections to the judgement and order of Presiding Officer allowing the Original Application. Though the objections are styled as cross objections, it appears that they were raised as part and parcel of reply to the appeal of respondent no.1. We are not going into technicalities of the matter. Assuming that cross objections could have been raised in such a manner, in our view, learned Chairperson has in the facts and circumstances rightly disallowed the

request of petitioners.

8. We are not deciding larger issue, namely, whether cross objections are permitted to be filed in proceedings under the RDB Act. The Act does not restrict the power of DRAT.. The Act clearly states that the DRT and DRAT are not bound by Code of Civil Procedure, 1908 and can regulate their own procedure, subject ofcourse to other provisions of RDB Act and any other Rules. The Tribunals under RDB Act are guided by principles of natural justice and consistent with that they can device their own procedure. They possessed same powers as are vested in a Civil Court while trying a suit in respect of matters enumerated in Section 22(2) of the RDB Act. Therefore, in the present case, we proceed on the basis that cross objections could have been filed in the manner done by petitioners herein. However, their insistence that cross objections be considered without insisting upon compliance with other procedural provisions as well as payment of court fee, is misconceived and untenable.

9. The learned Chairperson has observed that petitioners have supported the judgement of learned Presiding Officer on the issues which are agitated by respondent no.1 in the appeal.

However, petitioners are aggrieved by that part of order of Presiding Officer wherein their objection to the merits of claim and defences based thereupon have not been considered. The cross objections in this case really are subject matter of a substantive appeal. However, the learned Chairperson has refused to entertain them not just because there is no provision for filing such cross objections but on the ground that they are raised without compliance with provisions pertaining to payment of court fee in the RDB Act and the Rules. Mr.Jain’s submissions overlook the basic and fundamental aspect as to what is a cross objection. This aspect has been considered by Their Lordships of Supreme Court in the matter of Municipal Corporation of Delhi and others Vs. International Security & Intelligence Agency Ltd. reported in (2004)3-SCC-250 (supra). After analysing provisions of Arbitration Act, 1940, in the backdrop of which the issue fell for consideration as well as Sections 96, 100, Order 41, Rule 22 of CPC, this is what is observed by the Supreme Court :-

> "15. Right to prefer cross-objection partakes of the right to prefer an appeal. When the impugned decree or order is partly in favour of one party and partly in favour of the other, one party may rest contended by his partial success with a view to giving a quietus

> to the litigation. However, he may like to exercise his right of appeal if he finds that the other party was not interested in burying the hatchet and proposed to keep the lis alive by pursuing the same before the appellate forum. He too may in such circumstances exercise his right to file appeal by taking cross-objection.. Thus taking any cross-objection to the decree or order impugned is the exercise of right of appeal though such right is exercised in the form of taking cross-objection. The substantive right is the right of appeal; the form of cross-objection is a matter of procedure."

10. The view taken by the learned Chairperson that in the facts and circumstances of present case the remedy of the petitioners is to file a substantive appeal is, therefore, required to be confirmed for different reasons. The learned Chairperson was right in observing that if the petitioners want to assail some findings of learned Presiding Officer, they have to come up with a separate appeal wherein all contentions can be raised. Ofcourse, in filing such appeal, procedural provisions under RDB Act and Rules have to be complied with. Similarly, the issue of applicability of Section 21 would also arise. Therefore, assuming that cross objections could be filed before DRAT, in the facts and circumstances of this case, the direction of learned Chairperson to file substantive appeal is not liable to be interfered with.

11. We see no force in the contention of Mr.Jain that of cross objections are permissible in proceedings before DRAT then they ought to be entertained without payment of any court fee. Once the nature of right is clear, then it is difficult to dispense with requirement of payment of court fee in the present case. Mr.Jain's reliance on the decision of Supreme Court in (1992)4-SCC-736 is misplaced. There, Supreme Court was considering a case where an indigent person approached the Tribunal for compensation for the wrong done to him. The Tribunal in that case insisted upon payment of court fee. The Tribunal came to the conclusion that Order XXXIII of CPC has no application to claims preferred under Railway Claims Tribunals Act, 1987. The Supreme Court reversed this view of the Tribunal. In reversing this view, Supreme Court noticed that the Tribunal is not bound by CPC but has power to device and regulate its own procedure. After observing so, the Supreme Court held that there is nothing in the Act and the Rules which preclude the invocation of Order XXXIII of the Code. We are unable to see as to how this decision can have any application to the facts and circumstances of present case. Petitioners are not indigent persons nor is it their case that on account of

financial and other hardships they are not in a position to pay court fee. Their case is that cross objections do not require payment of any court fee. This decision does not lay down any such law. Therefore, it is clearly distinguishable.

12. In the result, the view taken by the learned Chairperson that remedy of the petitioners in this case is to file substantive appeal to impugn part of order of learned Presiding Officer is upheld for different reasons. We have proceeded on the basis that cross objections can be filed before DRAT but in the present case the cross objections were not liable to be entertained as they were filed without following procedural requirements and payment of court fee. The objections are really subject matter of independent appeal/proceedings and could not have been considered in an appeal preferred by respondent no.1. Therefore, leaving open the remedy of filing a substantive appeal, we dismiss this writ petition with no order as to costs.

13. We wish to make it clear that we have not gone into the rival contentions on merits of the controversy and they are expressly kept open.

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)